

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE: EQUIFAX, INC., CUSTOMER  
DATA SECURITY BREACH LITIGATION

Case Number

1:17-md-2800-TWT

IN RE: EQUIFAX DERIVATIVE  
LITIGATION

Case Number

1:18-cv-317-TWT

IN RE: EQUIFAX SECURITIES  
LITIGATION

Case Number

1:17-cv-3463-TWT

Transcript of a status conference

before the Honorable Thomas W. Thrash, Jr., Chief Judge

February 19, 2019; 2:01 p.m.

Atlanta, Georgia

(Appearances on page two)

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21  
22  
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P R O C E E D I N G S

(Call to the order of the Court.)

THE COURT: All right. This is the case of In Re: Equifax Customer Data Security Breach Litigation, case number 17-md-2800; In Re: Equifax Derivative Litigation, case number 18-cv-317; and In Re: Equifax Securities Litigation, case number 17-cv-3463.

I'm going to start with the MDL case. So first let me ask counsel for the parties who expect to participate in the status conference in the MDL case to identify yourself by name and, of course, the parties you represent.

MR. CANFIELD: Good morning, Your Honor. On this wet afternoon, I'm Ken Canfield, co-lead counsel for the Plaintiffs.

THE COURT: Well, I had no idea when we scheduled this status conference that it was going to be this miserable outside. So I'm sorry about that. There's nothing I can do.

MS. KELLER: Good afternoon, Your Honor. Amy Keller, also co-lead counsel and from Chicago. So I don't mind this weather at all.

THE COURT: Good afternoon, Ms. Keller.

MR. SIEGEL: And Norman Siegel of Stueve Siegel Hanson for the Consumer Plaintiffs, Your Honor.

THE COURT: Good afternoon, Mr. Siegel.

MR. SIEGEL: Good afternoon.

1 MR. BALSER: Good afternoon, Your Honor. David  
2 Balser of King and Spaulding on behalf of the Equifax  
3 Defendants.

4 THE COURT: Mr. Balser.

5 MS. SUMNER: Good afternoon, Your Honor. Phyllis  
6 Sumner with King and Spaulding on behalf of the Equifax  
7 Defendants.

8 THE COURT: Ms. Sumner.

9 MR. HASKINS: Good afternoon, Your Honor. Stewart  
10 Haskins on behalf of the Equifax Defendants as well.

11 THE COURT: Mr. Haskins.

12 MR. SCHNEIDER: Your Honor, Pete Schneider with the  
13 law firm of Schneider Wallace. We represent Plaintiff the  
14 Commonwealth of Puerto Rico.

15 MR. BATES: Good afternoon, Your Honor. Kyle Bates  
16 from Schneider Wallace, also for the Commonwealth of Puerto  
17 Rico.

18 THE COURT: Good afternoon, gentlemen.

19 MS. McCAFFREY: Good afternoon, Your Honor. Meghan  
20 McCaffrey for Quinn Emanuel on behalf of the Defendant Mr.  
21 Richard Smith.

22 MR. CHAIKEN: Dave Chaiken from Troutman Sanders,  
23 also for Defendant Richard Smith. Thank you.

24 THE COURT: Okay. We're not to the Securities  
25 Litigation case yet.

1 MR. CHAIKEN: That's right, Your Honor. We've got  
2 an issue with respect to the spinoff MDL and the answer  
3 deadline coming up. So we're hoping to address that with  
4 Your Honor.

5 THE COURT: Fine.

6 MR. GUGLIELMO: Good afternoon, Your Honor. Joseph  
7 Guglielmo, co-lead counsel, on behalf of the Financial  
8 Institution Plaintiffs.

9 THE COURT: Good afternoon, Mr. Guglielmo.

10 MR. LYNCH: Gary Lynch, Your Honor, on behalf of  
11 the Financial Institution Plaintiffs.

12 THE COURT: Mr. Lynch.

13 All right. This is a status conference being held  
14 at my request. I've received the joint proposed agenda, and  
15 my intention is simply to go through the agenda as stated,  
16 with one additional item.

17 First is the report on the status of discovery.

18 MS. BRITTON: (Speaking by telephone) Elizabeth  
19 Britton with the Cadel firm.

20 THE COURT: Mr. Canfield.

21 MR. CANFIELD: Thank you, Your Honor. I guess this  
22 is a report on the status of Plaintiffs' efforts to get  
23 discovery from Equifax. And the Court has established a  
24 fairly aggressive schedule for fact discovery. Fact  
25 discovery is supposed to be completed by December 30th of

1 this year. And the Court's CMOs envision that the parties  
2 would do a lot of the groundwork prior to the formal  
3 beginning of discovery under the local rules so that once  
4 that formal discovery opened, we'd all be able to hit the  
5 ground running. And in many ways, we've gotten pretty far  
6 along in meeting the requirements that the Court has imposed.

7 The Consumer Plaintiffs and the Financial  
8 Institution Plaintiffs and Equifax worked out a number of  
9 CMOs dealing with some major issues. We exchanged request  
10 for production of documents and have had some meet and  
11 confers relating to those requests. So that's been moving  
12 along.

13 We didn't make as much progress as the Court is  
14 aware when we turned to the issue of search terms and  
15 custodians, I know which is one of the Court's favorite  
16 issues. That's what triggered the Plaintiffs filing of the  
17 motion for limited relief from the discovery stay that was  
18 briefed and remains pending.

19 The -- now that the Court has ruled on the motions  
20 to dismiss and we know that the formal discovery period is  
21 about to begin, the parties have had some discussions about  
22 making some efforts to put us in the position where we can  
23 meaningfully negotiate over search terms and custodians.

24 And what we have agreed is that in accordance with  
25 the -- one of the Court's CMOs, Equifax will begin to produce

1 documents on February 28th and also serve its formal  
2 objections to Plaintiffs' discovery requests.

3           They will also begin -- the documents that they  
4 will begin producing at that time are the ones that don't  
5 require electronic searches to be conducted. So we will  
6 start to get the benefit of those documents fairly quickly,  
7 we hope.

8           Equifax has also said that they will produce a  
9 substantial number of the documents that have already been  
10 provided to government regulators and other government  
11 authorities by March 15th, and we've been told that we should  
12 expect between ninety and a hundred thousand documents, which  
13 we don't know for sure, but we suspect there's about 75 to 80  
14 percent of all the documents that Equifax did produce to the  
15 government.

16           Getting those documents will be a substantial help  
17 to the Plaintiffs in understanding what search terms need to  
18 be used and what custodians' documents need to be searched.

19           As we mentioned in our motion for limited relief  
20 from the discovery stay, we believe that we also needed to  
21 take some limited depositions early on to again inform us so  
22 that when the electronic searches are done, they're as  
23 comprehensive as we believe they need to be. So for that  
24 purpose, we're going to be scheduling some depositions early  
25 on after the formal discovery period begins at the end of

1 March, and we've already communicated with King and Spaulding  
2 about scheduling for one of those.

3 We know that at the end of that process, which we  
4 don't know exactly when that will be, we also don't know what  
5 kind of documents we're going to get, but we're hopeful that  
6 we'll be in a much better position to negotiate with King and  
7 Spaulding about search terms and custodians.

8 We do know that as further information has come out  
9 about what happened during the breach, additional custodians  
10 and search terms have been -- become obvious to us. For  
11 example, when the House committee report came out that we  
12 talked quite a bit about during the oral argument on the  
13 motion to dismiss, that listed a number of Equifax employees  
14 and talked about certain documents. And a lot of those  
15 people who were named in the House report were not on the  
16 list of custodians we originally got.

17 So that is kind of an example of why we need as  
18 much information as we can before we embark upon this process  
19 of meaningfully negotiating these search terms.

20 Once we -- the Plaintiffs are in a position where  
21 we feel we can meaningfully do that, which hopefully will not  
22 be very long, then we intend to have a discussion with  
23 Equifax about what those search terms and custodians need to  
24 be, and we're hopeful, but guardedly so, about our ability to  
25 reach agreement on those matters.



1           We haven't agreed on a specific schedule by which  
2           that is going to be done. We think that working together in  
3           good faith will move the process along. And if we need a  
4           formal schedule, we'll propose one to the Court or at least  
5           attempt to agree upon one for submission at a future status  
6           conference.

7           Our hope is to avoid what happened in AndroGel. I  
8           don't think that's what's going to happen in this case.

9           THE COURT: That was a disaster.

10          MR. CANFIELD: Tell me, Judge. I was a part of it  
11          as much as you were, probably even spent more time on search  
12          terms and custodians. But we're doing everything we can so  
13          that doesn't end up delaying where we are. And our goal is  
14          to have as much of the documentation as can be produced done  
15          early on in the process.

16          There's one other factor that the parties have  
17          discussed and that is that if after the searches are done for  
18          Plaintiffs existing request for production, our first request  
19          for production, Plaintiffs serve additional requests, which  
20          we anticipate is likely to happen, that even after Equifax  
21          has done its initial searches with the agreed-upon search  
22          terms and custodians, that the parties will discuss adding  
23          additional search terms and additional custodians as those  
24          become apparent as a result of the discovery that's taken  
25          forward.

1           So that's our report on the status of Plaintiffs'  
2       discovery efforts directed at Equifax.

3           THE COURT: Mr. Guglielmo, do you or Mr. Lynch want  
4       to say anything about discovery on behalf of the Financial  
5       Institutions?

6           MR. GUGLIELMO: No, Your Honor. I think Mr.  
7       Canfield has accurately summarized the events that have been  
8       taking place amongst the Consumer and Financial Institution  
9       cases.

10          THE COURT: Mr. Balser.

11          MR. BALSER: Thank you, Your Honor. You'll be  
12       happy to know that I agree with almost everything that Mr.  
13       Canfield said. I do want to emphasize to the Court that  
14       Equifax has been complying not only with the letter but the  
15       spirit of CMOs number four and five, which govern the  
16       discovery plan in the case.

17          Even though the discovery period has not yet begun,  
18       we have provided the Plaintiffs with initial disclosures, ESI  
19       disclosures, custodian disclosures, search terms and  
20       methodology used to search documents.

21          As Mr. Canfield noted, we have responses to their  
22       79 requests for production due February 27th or 28th, and  
23       we're going to provide responses and objections to those.

24          Requests at that time will also begin, as Mr.  
25       Canfield noted, producing documents, and we expect, as he

1 indicated, to be producing approximately 100,000 documents  
2 that were produced to the government by March 15th, even  
3 though the discovery period doesn't formally commence until  
4 March 29th.

5 So we are -- I think that's right. March 20- -- I  
6 guess -- is that right?

7 MR. CANFIELD: March 29th.

8 MR. BALSER: March 30th. So even though the  
9 discovery period has not formally begun, we are expediting  
10 the production of documents in order to heed the Court's  
11 instruction to be in a position to hit the ground running  
12 once the discovery period begins.

13 So we were not in the AndroGel case. We --

14 THE COURT: That's your good fortune.

15 MR. BALSER: Yeah. We intend to do our part to  
16 avoid a similar experience for both Plaintiffs' lawyers and  
17 the Court.

18 I'm sure there will be issues that we won't reach  
19 full agreement on. And if we can't, we'll obviously be back  
20 to you together to resolve those. But for now, we are fully  
21 cooperating, and I think we're working constructively with  
22 Plaintiffs' counsel to get them in a position to commence  
23 discovery and depositions early after the commencement of the  
24 discovery period.

25 THE COURT: Thank you, Mr. Balser.

1 Does anybody else want to be heard on discovery?

2 (No response.)

3 THE COURT: Well, I'm going to try to be optimistic  
4 and hope that y'all can work together and avoid some of the  
5 issues that have arisen in other cases that have gotten those  
6 other cases bogged down and are just in a state of paralysis  
7 over discovery issues. So, again, I encourage both sides to  
8 be reasonable and compromise, if necessary. The Plaintiffs  
9 may not get everything they want. The Defendants may give up  
10 more than it wants to, but that's just the way this process  
11 works.

12 So we will continue having monthly status  
13 conferences, and that's always going to be an item on the  
14 agenda is the progress of discovery. So, hopefully, things  
15 won't get out of hand.

16 All right. The next item is the report on the  
17 status of third-party discovery. Mr. Canfield.

18 MR. CANFIELD: And following up on Mr. Balser's  
19 comments and the Court's comments, as I recall, when we were  
20 before you for the leadership application hearing in this  
21 case, I said that we -- all the Plaintiffs' lawyers in our  
22 group have had long-standing relationships with the lawyers  
23 at King and Spaulding, believed we had a great deal of mutual  
24 respect built on personal experience and reputation, and  
25 that's continued to date.

1           So we're hopeful that some of the issues that arose  
2     in the AndroGel case are not going to be a part of this case.  
3     We promised to you that we will be working together in a  
4     professional way, and that is certainly the way things have  
5     been handled to date. And I have every expectation that they  
6     will continue that way in the future.

7           With regard to the status of third-party discovery,  
8     I'm pleased to announce that the parties have agreed that  
9     Plaintiffs may begin serving subpoenas on third parties  
10    immediately and not have to wait until after the end of  
11    March. We've served preservation subpoenas on a number of  
12    third parties. That was done quite some time ago.

13           But by beginning the process of service now, it  
14    will give the third parties additional time that they  
15    otherwise wouldn't have had and it's going to expedite the  
16    process.

17           We will, obviously, work with defense counsel and  
18    with the third-parties' counsel to schedule any depositions  
19    that are needed of third parties, and, obviously, use good-  
20    faith efforts, as we always would, to ensure that people have  
21    adequate and reasonable time to respond.

22           We will set the dates, the return dates on these  
23    depositions for once the period of formal discovery begins.  
24    So I think that's -- it's not an issue that needs the Court's  
25    ruling or direction. It's an informational matter for the

1 Court.

2 THE COURT: Mr. Balser, do you have anything to  
3 add?

4 MR. BALSER: No, Your Honor.

5 THE COURT: All right. Very good.

6 The next item is the motion for clarification as to  
7 the individual defendants.

8 MR. CANFIELD: That should be a relatively short  
9 issue, Your Honor. I think all the parties are in agreement.  
10 There are some lawyers who are present here who can speak to  
11 this, if need be. But they represent individual defendants  
12 who were sued in a case filed by the plaintiff block that was  
13 one of the hundreds of cases that were transferred to this  
14 court for purposes of the MDL.

15 That case was administratively closed and  
16 litigation on that case was subsumed within the consolidated  
17 Amended Complaint that Plaintiffs filed, and that serves as  
18 the vehicle for litigating these issues.

19 The lawyers for the individual defendants in the  
20 block case are looking for clarification from the Court that  
21 it is not necessary for them to file answers on behalf of  
22 their individual defendants in those cases. And the Consumer  
23 and Financial Institution Plaintiffs are certainly agreeable  
24 with that, as I understand Equifax is. So we'd urge the  
25 Court to grant their motion.

1 THE COURT: Mr. Balser.

2 MR. BALSER: We concur.

3 THE COURT: Ms. McCaffrey, is there any reason why  
4 I shouldn't grant your motion?

5 MS. McCAFFREY: No, Your Honor. That would be  
6 lovely. Thank you.

7 (Courtroom laughter.)

8 THE COURT: All right. I'll grant the motion for  
9 clarification at Docket Number 548. There's no need for any  
10 of the individual defendants to file answers in the block  
11 case.

12 The next item is the Class Plaintiffs' motion for  
13 limited relief from the discovery stay.

14 MR. CANFIELD: There are two issues that were  
15 raised in the Plaintiffs' motion. The first was the request  
16 that we have limited relief to begin immediate discovery so  
17 we can negotiate search terms and custodians, and the second  
18 issue dealt with non-disclosure agreements that were signed  
19 by former employees that we found to be interfering with our  
20 ability to conduct informal discovery.

21 In light of the Court's ruling on the motions to  
22 dismiss and the upcoming beginning of the formal discovery  
23 period, we don't believe it's necessary for the Court to rule  
24 on that first section of the -- our pending motion. But we  
25 do believe that the Court should take under consideration and

1 rule upon the issue of the non-disclosure agreements.

2 And if the Court recalls, that has been fully  
3 briefed. It was argued last fall. And both sides submitted  
4 proposed orders governing what was to happen, and we were --  
5 we have competing orders and we were at an impasse.

6 So Plaintiffs just request that the Court take that  
7 issue up and issue a ruling when it has the opportunity to do  
8 that. And if there's anything further that the Court needs  
9 from us in order to help along that process, we obviously  
10 would be happy to do whatever the Court directs.

11 THE COURT: Ms. Sumner.

12 MS. SUMNER: Thank you, Your Honor. I don't want  
13 to belabor arguments that we made previously because, like  
14 Mr. Canfield said, this has been fully briefed.

15 I'll just point out that the parties actually did  
16 make significant progress in getting close to a process, and  
17 this really is now a matter of differences in the proposed  
18 orders relating to how that process should occur.

19 If you compare the orders, they actually overlap  
20 and there is some consistency. But Equifax has requested  
21 some additional steps to protect the attorney-client  
22 privilege and the confidentiality agreements in particular  
23 that it has entered into with other third parties.

24 So we're happy to answer any questions about that.  
25 But that's really what it boils down to as a matter of



1 process.

2 THE COURT: All right, Ms. Sumner.

3 MR. BALSER: Your Honor, I'm going to offer another  
4 path on this. I agree with Mr. Canfield that the first part  
5 of the prior motion is mooted by the order on the motions to  
6 dismiss. But I think -- my view is that the second part of  
7 the motion on which they now seek relief has also been  
8 mooted.

9 I think the right way to deal with this is to -- we  
10 have a discovery period that commences March 29th. They can  
11 notice the depositions of whatever former employees they  
12 want. And any of the confidentiality issues can just be  
13 hashed out in the discovery process.

14 If the Court, rather than choosing between one  
15 order or the other or ruling on this motion, the vast  
16 majority of which I think has been mooted, I think another  
17 way to do it and a way I would suggest or at least recommend  
18 the Court consider is just let them notice whatever  
19 depositions they want and then hash it out in the deposition  
20 process. I actually think that might be more efficient.

21 MR. CANFIELD: Your Honor, that would be the worst  
22 possible result because, effectively, that would mean we  
23 can't talk to a former employee that has a non-disclosure  
24 agreement with King and Spaulding, which apparently is most  
25 of them, and it would essentially block all informal

1 discovery efforts that parties universally have the  
2 opportunity to do.

3 So Mr. Balser's approach would essentially prevent  
4 us from doing that, doing something that is routinely allowed  
5 in cases. It is consistent with the ethical rules, and King  
6 and Spaulding itself doesn't contend that its NDAs insulate  
7 its former employees from talking to us. The parties just  
8 disagree about what steps need to be done and have to go  
9 through -- the Plaintiffs have to go through in order to  
10 conduct those interviews.

11 Our proposed order is consistent with orders that  
12 have -- other orders that have been entered by this Court and  
13 other courts and that incorporate every single one of the  
14 items required by the ethical rules.

15 King and Spaulding has had a series of demands that  
16 we believe are designed to deter former employees from  
17 talking to Plaintiffs' counsel or our investigators. If the  
18 Court recalls, it started with King and Spaulding wanted us  
19 to identify in advance who it was that we intended to  
20 interview. We had to give them the date that the interview  
21 was going to occur. We had to provide a list of all the  
22 questions that we wanted to ask the former employees.

23 And it is true that over time, about five or six  
24 months of discussion, they would gradually agree not to have  
25 all of the -- not to insist upon all of those requirements.

1 But under King and Spaulding's order, what would  
2 happen, we believe, is that our investigator would have to  
3 read a script to be -- that hasn't even been negotiated to  
4 the witness. And so you're talking about five minutes, ten  
5 minutes of telling this person what either an onerous thing  
6 that this is or how difficult it is going to be, and the  
7 inevitable result is the witnesses are going to say, I don't  
8 want to participate. I don't want -- it sounds too  
9 legalistic to me.

10 So we believe that the existing ethical rules are  
11 adequate. We've submitted an order to that effect. And we  
12 would urge the Court to consider our motion and to grant that  
13 order.

14 One footnote. In looking at the briefing on this  
15 issue this morning, I could not find that we actually  
16 submitted a proposed order to the Court. I think we did.  
17 That's my recollection. We will check. And if we didn't and  
18 then the Court would find it helpful, we'll be glad to submit  
19 an actual proposed order.

20 We specified, clearly specified in our brief the  
21 items that we believe should have been included in the order,  
22 but I'm not sure that we actually filed of record the  
23 proposed order itself.

24 THE COURT: Well, if you haven't, you had need to  
25 do that, Mr. Canfield, because in these situations -- and Ms.

1 Sumner -- usually what I do is I just decide who's being the  
2 most unreasonable and sign the other side's order.

3 (Courtroom laughter.)

4 MR. CANFIELD: We'll submit ours. It probably  
5 won't happen today, given the weather, but we'll do it  
6 tomorrow, if that's all right.

7 MS. SUMNER: Your Honor, just one clarification for  
8 the record. The non-disclosure agreements are not with King  
9 and Spaulding. These are agreements with Equifax and also  
10 other third parties relating to confidential trade secret  
11 information that sometimes is shared to Equifax employees.

12 So to the extent Mr. Canfield was referring to  
13 agreements with King and Spaulding, this is -- these are  
14 agreements with Equifax and other third parties. However,  
15 the attorney-client privilege issue is obviously one that  
16 King and Spaulding is involved in. Thank you.

17 THE COURT: All right, Ms. Sumner.

18 All right. The next item is other outstanding  
19 motions.

20 MR. SCHNEIDER: Your Honor, Pete Schneider on  
21 behalf of the Commonwealth of Puerto Rico. It's a privilege  
22 to be in your court today. Thank you.

23 The Court may recall that the City of Chicago filed  
24 a motion for separate governmental track, and we join in that  
25 motion.

1           When the JPML transferred Puerto Rico's case into  
2 this court, it specifically stated that separate tracks were  
3 duly available to this Court to efficiently and fairly handle  
4 government enforcement actions.

5           Unlike Chicago, however, Your Honor, Puerto Rico  
6 does not have voting members in the House and Senate,  
7 including those on the House Oversight Committee itself that  
8 investigated Equifax for misconduct for the very issues that  
9 arose in this case. Puerto Rico does not have that  
10 representation.

11           It would be fair, Your Honor, and just and  
12 equitable, given the circumstances in which Puerto Rico finds  
13 itself, to have a separate governmental enforcement track on  
14 behalf of Puerto Rico. And therefore we join in the motion  
15 for a separate track with the City of Chicago, Illinois, and  
16 respectfully ask Your Honor to allow a separate track for  
17 governmental actions.

18           THE COURT: All right, Mr. Schneider.

19           MR. SCHNEIDER: Thank you, Your Honor.

20           THE COURT: Does anybody else want to speak to that  
21 issue?

22           MR. CANFIELD: Your Honor, the Plaintiffs have not  
23 received the motion that was filed by the -- by Puerto Rico.  
24 My understanding is it was filed last Friday by hand and  
25 hasn't yet hit the ECF system. So this afternoon was the

1 first time that we were aware of it.

2 We will oppose the motion. We don't believe a  
3 separate track is necessary, but we would like an opportunity  
4 to brief the issue. And I think under the Court's case  
5 management orders, the parties are to meet and confer and  
6 propose a briefing schedule that the Court would enter to  
7 deal with new motions. So that's what we would suggest  
8 happen here.

9 MR. SCHNEIDER: Your Honor, if it pleases the  
10 Court, we did send out a meet-and-confer e-mail. We received  
11 one response to it from the Consumer Plaintiffs that said  
12 that they did not take issue with our joinder in the City of  
13 Chicago's motion for a separate track.

14 Again, these are governmental enforcement actions.  
15 They don't deal with class certification and a lot of the  
16 issues that the Consumer Plaintiffs and Equifax are going to  
17 have to deal with.

18 Puerto Rico, as the Court is well aware, has had so  
19 many difficulties since the hurricane. It would be unfair to  
20 have Puerto Rico unjustly delayed as a result of issues that  
21 arise between the Consumer Plaintiffs and Equifax.

22 And we are happy to continue to brief the issue.  
23 We're happy to come back here in front of Your Honor and  
24 argue these points again at any time the Court deems  
25 appropriate.

1 THE COURT: Mr. Balser.

2 MR. BALSER: Your Honor, we have not yet seen a  
3 formal motion for joinder filed by the Commonwealth of Puerto  
4 Rico.

5 We would not oppose joinder by Puerto Rico with the  
6 City of Chicago's motion, but we most definitely will oppose  
7 the creation of a separate track for the City of Chicago and  
8 the Commonwealth of Puerto Rico. And so I would suggest that  
9 if and when that motion gets filed on the ECF and served,  
10 that we have an appropriate time to further brief the issues.

11 THE COURT: Well, I'm not going to make any attempt  
12 today to rule on either Chicago's motion or Puerto Rico's  
13 motion. So y'all confer and come up with a briefing  
14 schedule, and I'll rule when I can.

15 MR. SCHNEIDER: Yes, sir, Your Honor.

16 THE COURT: The final item is the -- on your agenda  
17 is the coordination of discovery with the Securities  
18 Litigation. Do you want to just wait on that one until I get  
19 to the Securities Litigation part or do y'all want to leave?

20 MR. BALSER: Your Honor, this is an issue that we  
21 raised, and I think we can probably cover it pretty quickly  
22 now. And since the Court is going to be having monthly  
23 status conferences, I think for today's purposes we wanted to  
24 put on the Court's radar the issue of coordination for  
25 purposes of efficiency.

1 I think we're not yet even in the commencement of  
2 the discovery period. So I think these issues will have to  
3 play out. But we think, especially with respect to Equifax  
4 witnesses for depositions, we will only want those people.  
5 We think that's fair under the circumstances. But I don't  
6 think we have to get into any of the specifics today because  
7 there are -- there's a lot of water that needs to go under  
8 the bridge before we're really ready to talk concretely about  
9 it.

10 But we do think -- I mean, you'll recall my partner  
11 Mr. Smith argued vociferously to not be included in this MDL,  
12 and you -- I think all will remember fondly your remark to  
13 Mr. Smith that he's going to be here with us, and part of the  
14 Court's rationale for that was efficiency and coordination, I  
15 believe.

16 So we do think given the fact that the Securities  
17 Litigation is part of this MDL, that we ought to be  
18 coordinating on discovery, and that's why we wanted to raise  
19 it.

20 But we have no specific proposal for Your Honor  
21 today and neither will my colleagues in the Securities track  
22 other than to say that we're committed to trying to figure  
23 out a way to make this as efficient as possible, including  
24 with coordination between those two aspects of the MDL.

25 THE COURT: Well, thank you, Mr. Balser.



1           And I do expect that there will be coordination of  
2           discovery between the MDL case and the Securities Litigation  
3           case and the Derivative case if it goes forward, and I'll  
4           deal with any problems that come up when they come up.

5           All right. Somebody on the phone is making  
6           breathing sounds which are coming across into our sound  
7           system. So everybody that's on the phone, mute your phone,  
8           please, so we don't hear you breathing.

9           It seems to have stopped.

10          All right. There's one item -- two items on my  
11          agenda. One is -- actually, three. One is all of the  
12          individual cases that were transferred to me or at least the  
13          vast majority of them are still open on the docket. Is there  
14          any reason why those can't be closed administratively? Among  
15          other things, it's making my pending case number look totally  
16          atrocious.

17          MR. CANFIELD: Your Honor, from the Consumer  
18          Plaintiffs' standpoint, we had understood that they already  
19          had been administratively closed. And I think the Court had  
20          announced its intention to do that. So we're perfectly fine  
21          with that approach. We think it would be appropriate.

22          THE COURT: Mr. Balser.

23          MR. BALSER: As you might imagine, we certainly  
24          have no objection to your doing that.

25          THE COURT: All right.

1 Well, I'll order the clerk to close  
2 administratively all of the individual cases other than the  
3 pro ses, and that's what I need to talk about next. We've  
4 got a lot of pro se cases, and I've basically just been  
5 ignoring them until I could rule on the motions to dismiss.

6 I've got to start doing something with them. Any  
7 suggestions, Mr. Balser?

8 MR. BALSER: One suggestion would be to treat those  
9 the same way you're treating the individual cases and close  
10 those administratively as well.

11 THE COURT: I'm not sure I can do that because  
12 we've kept the pro se cases separate and have not put them in  
13 with the MDL cases.

14 MR. BALSER: Your Honor, we can move to include  
15 those cases in the MDL if that would provide the appropriate  
16 process to deal with those.

17 THE COURT: Well, many of them were transferred to  
18 me by the MDL panel. So in that sense, they are in the MDL  
19 already.

20 But, for example, I don't know what Mr. Canfield's  
21 position is, whether he is representing the pro ses as well  
22 as everybody -- all the other Plaintiffs in the MDL.

23 MR. CANFIELD: Judge, I haven't thought about the  
24 issue until just now. But I don't see conceptually any  
25 difference between a pro se complaint and one that was filed

1 by a lawyer.

2 One of the cases that was transferred here, the MDL  
3 panel obviously envisioned that there would be coordination.

4 Under the Court's CMOs, the Consumer Plaintiffs  
5 filed a consolidated Amended Complaint which is to serve as  
6 the vehicle for all of the litigation involved in -- that was  
7 initiated by all of those cases, pro se or filed by lawyers.  
8 And to allow individual pro se Plaintiffs to participate  
9 separate and apart from the efforts that are being led by  
10 co-lead counsel that the Court appointed could lead to chaos.

11 So our belief is along the lines of what Equifax  
12 has suggested, that they simply be administratively closed.

13 If for whatever reason the Court is unwilling to do  
14 that or doesn't believe it can do that, an alternative would  
15 simply be to stay all those cases until the complete --  
16 completion of discovery proceedings, with a Consolidated  
17 Amended Complaint, and then take another look at that point.

18 THE COURT: All right. I'm going to order the  
19 clerk to administratively close all of the pro ses that were  
20 transferred here by the MDL panel for the very reason you  
21 just gave, Mr. Canfield. And you think about it and tell me  
22 at the next status conference if you think I can do the same  
23 thing with the ones that were filed here directly.

24 MR. CANFIELD: We will do that, Your Honor.

25 (Discussion off the record between the Court and

1 the courtroom deputy.)

2 THE COURT: The last issue and the most unfortunate  
3 one deals with future status conferences. We will have them  
4 every month or so. The problem arises because on March 4th,  
5 I will be starting the FTC versus Actavis bench trial in the  
6 AndroGel case, and I'm expecting that to take all of March.

7 I will take Friday afternoons off in that trial.  
8 So as much as I hate doing these things on Friday afternoons,  
9 that's the only time that's going to be available in March.

10 And then it gets worse because on April the 8th, I  
11 start the Gangster Disciples criminal RICO trial involving 13  
12 alleged members of the Gangsters Disciples prison gang, and  
13 that one is supposed to take six to eight weeks. And, again,  
14 I'll be taking Friday afternoons off.

15 But the only time available for these status  
16 conferences will be Friday afternoon. So I'm not happy about  
17 that, but there's just no alternative.

18 So Ms. Sewell will be in touch with y'all or y'all  
19 can decide after I leave the bench when the next status  
20 conference will be.

21 Next is the Derivative Litigation.

22 MR. BALSER: Your Honor, before we close out on the  
23 MDL part of the status conference, I did want to just bring  
24 to the Court's attention that there is a possibility that  
25 we'll be filing a very narrow motion for clarification with

1 respect to one very, very narrow aspect of the Court's order  
2 and the motion to dismiss.

3 I didn't want that to come over the transom without  
4 my having at least mentioned it as a possibility at this  
5 hearing. So there are still some issues we're considering  
6 looking at, but I wanted to let the Court know that.

7 And, obviously, if it gets filed, we'll file it by  
8 the deadline, which is February 25th.

9 THE COURT: If it's not ruled on by March the 4th,  
10 God help us, Mr. Balser.

11 (Courtroom laughter.)

12 MR. BALSER: I understand.

13 THE COURT: All right. The Derivative Litigation.

14 MR. WEISS: Good afternoon, Your Honor. Joseph  
15 Weiss on behalf of the Derivative Plaintiffs.

16 THE COURT: Good afternoon, Mr. Weiss.

17 MR. WEISS: Thank you. It's good to get out of the  
18 cold of New York and come to the rain in Atlanta.

19 In any event, we, of course, agree that there  
20 should be coordination of discovery, and I don't think  
21 there's going to be any issue as to that between us and the  
22 Defendants or counsel for the special committee, but they can  
23 speak for themselves.

24 But we have agreed to enter into a confidentiality  
25 order in order to facilitate the initial production of

1 documents. And I frankly was not aware of the number of  
2 documents, but, you know, we'll be ready for them. And we're  
3 anticipating they'll be producing the same documents to us as  
4 they produce in the MDL and presumably in the Securities  
5 case.

6 Our case is different than the others in the sense  
7 that in addition to looking at the past, we're looking at the  
8 future in terms of protecting the company and making sure  
9 something like this doesn't happen again. So we have  
10 discussed with them -- and it was awaiting Your Honor's  
11 rulings on the motion to dismiss -- a meeting between us and  
12 our expert and Equifax's chief information security officer,  
13 and that's going to be scheduled.

14 Once we're able to do that and to learn what steps  
15 the company has already taken, what they're contemplating  
16 and, you know, what we and our expert believe still should be  
17 done, we're going to have a meeting with the demand review  
18 committee of the board of directors, which is going to be our  
19 second meeting, and it's going to try to get a feel for what  
20 the company is prepared to listen to from us and where they  
21 stand. So there's some flux here.

22 There's also the issue of money in our case, just  
23 like the others, in terms of the damages to the company. But  
24 that's something that will still have to be dealt with, and  
25 we think the discovery will be helpful in that regard.

1           That's pretty much where we stand, Your Honor.

2           THE COURT: All right. Thank you, Mr. Weiss.

3           MR. WEISS: Thank you.

4           MR. POPE: Mr. Pope, Your Honor, on behalf of  
5   Equifax in the Derivative Litigation. The Derivative  
6   Litigation is in a different posture than the Securities  
7   Litigation and the MDL. There is no pending discovery.  
8   There are no discovery requests in that case.

9           So while we agree at a high level that there should  
10   be coordination, there's not anything to respond to from the  
11   Plaintiffs in terms of discovery.

12           So unlike in the Securities Litigation where  
13   there's going to be responses and objections to document  
14   requests, there's not that mechanism in the Derivative  
15   Litigation.

16           So while, as I told Mr. Weiss, we're willing to  
17   share documents across with him with respect to what we  
18   produce in the Securities Litigation, there's not that  
19   vehicle. So we're just not there yet, I think, Your Honor.  
20   But I heard Your Honor and you expect coordination, and we'll  
21   work with Mr. Weiss on that, but we're just in a different  
22   place procedurally in the Derivative Litigation. There's  
23   been no motion practice there. There's been no response to  
24   the Complaint.

25           So I'll let the committee counsel speak. But we

1 intend to cooperate. We intend to share documents, where  
2 appropriate, but we're in a different posture with respect to  
3 the Derivative Litigation, Your Honor.

4 THE COURT: All right, Mr. Pope.

5 Anybody else want to be heard on the Derivative  
6 case?

7 (No response).

8 THE COURT: All right. That leads to the  
9 Securities case. I've got your agenda, and the first item on  
10 it is coordination of discovery. So, Mr. Harrod.

11 MR. HARROD: Good afternoon, Your Honor. It's good  
12 to see you again.

13 On the topic of coordination, we don't have a  
14 formal proposal from the Defendants about what exactly  
15 coordination they are looking for. We are, of course,  
16 willing to and expect to be able to coordinate as much as  
17 reasonably possible.

18 The only constraint that I would say is that I  
19 would rather have a specific set of procedures or guidelines  
20 that they want in terms of coordination so that we can  
21 respond to it in a meaningful way. And that's all I would  
22 say about that.

23 You know, we obviously want to preserve both the  
24 parties and the Court's resources in terms of not engaging in  
25 unnecessary motion practice or anything else.



1           So to the extent that we can do that without  
2           sacrificing the ability to litigate our case, we'll be happy  
3           to do so.

4           THE COURT: Thank you, Mr. Harrod.

5           MR. HARROD: You're welcome.

6           THE COURT: Mr. Smith, do you want to be heard on  
7           that?

8           MR. SMITH: Mr. Pope will respond.

9           THE COURT: All right.

10          MR. POPE: Your Honor, we agree that there ought to  
11          be a procedure and protocol, and we're committed to get the  
12          Plaintiffs a draft of that, and we'll continue to meet and  
13          confer on that. In the event we can't agree, we'll be back  
14          here to discuss it with you on the Friday afternoon to be  
15          named in March.

16          THE COURT: Fine.

17          The second item is the status of proposed search  
18          items and custodians.

19          MR. HARROD: Thank you, Your Honor. We don't have  
20          a lot of dispute, but I just wanted to inform the Court that  
21          the progress, as the MDL Plaintiffs noted, on resolving the  
22          question of both custodians and search terms has not gone  
23          quite as well as I would have liked. I would have liked at  
24          this point, after the motion to dismiss has been resolved, to  
25          have more of a complete agreement on that.

1           And I'm unhappy about one -- a couple of particular  
2 issues. One is that there's some disagreement about  
3 custodians. We're going to make a formal response to the  
4 Defendants probably this week or early next week.

5           But just to give you one example, Your Honor, one  
6 of the custodians who is not on the Defendants' list is Mr.  
7 John Kelly, who is the chief legal officer. He's referenced  
8 in your opinion as the supervisor of two of the individuals  
9 who were responsible for cyber security at the company.  
10 Obviously, we need to have his documents.

11           During this conference this afternoon, Your Honor,  
12 the Defendants actually filed their motion. I think it's  
13 styled as a motion for clarification regarding your order on  
14 the very topic of the corporate scienter aspect of your  
15 motion to dismiss opinion.

16           Mr. Kelly's role as the supervisor of the people  
17 who you identified as being principally responsible for cyber  
18 security at the company makes it clear that we need to  
19 understand what information he was receiving during the class  
20 period with respect to that issue. So that's just one  
21 example.

22           On the question of search terms, we served our  
23 document request in August of last year. We've had three  
24 exchanges of revisions on search terms with the Defendants.

25           At this point, I am -- I'm hopeful that we'll be

1 able to reach agreement on these issues, but at the present  
2 we're not. We're having some difficulty trying to find a way  
3 to understand what each other is saying. There's a dispute  
4 basically about the breadth of the search terms and how many  
5 documents are culled in that process.

6 I can understand from Your Honor's comments about  
7 the AndroGel case that you are looking for the parties to try  
8 to find a way to compromise on this, and we will do that.  
9 But I am concerned about the position the Defendants have  
10 taken so far. And I would ask that -- or I would expect that  
11 if the issues are not resolved prior to the next status  
12 conference, that we will make some request for the Court to  
13 intervene on that, with the understanding and knowledge that  
14 Your Honor would like us to try to resolve that as best we  
15 can. So I will make every effort to do that, but at this  
16 point I can't say that we're there.

17 THE COURT: Mr. Smith or Mr. Pope.

18 MR. POPE: We concur with Mr. Harrod. We'll make  
19 every effort to not bring it before Your Honor.

20 I will say that I think with respect -- we're  
21 actually farther along than the MDL Plaintiffs with respect  
22 to search terms and parties.

23 So we've made valiant efforts. We're not there  
24 yet. We're going to be producing documents early, before  
25 fact discovery starts, the same way it's going to occur in

1 the MDL.

2 So to the extent they want to review those  
3 documents and inform themselves with respect to negotiations,  
4 then I encourage them to do that and I encourage both sides  
5 to try to reach agreement before the next status conference.

6 THE COURT: All right. The next item is update  
7 regarding previously produced materials.

8 MR. HARROD: On this, Your Honor, I think I can be  
9 very brief. As they noted in the MDL cases, the Defendants  
10 have agreed to produce shortly after their responses to our  
11 document requests which are due February 27th. They're going  
12 to produce the corpus of the documents that have been  
13 produced in connection with governmental and regulatory  
14 investigations. So I'm happy to report that.

15 While I would say in contrast to what Mr. Pope just  
16 said, I am not sure that those documents are going to be  
17 dispositive of the question of what the search terms are. I  
18 think we're going to need to try to come to agreement.

19 Obviously, there may be information in that  
20 production that will help us, but I think that we need to  
21 make sure that we have a population of documents that's  
22 produced in our case that is tailored to the issues in our  
23 case. And so we need to protect our interests in that  
24 regard, and hopefully we'll be able to do that by compromise.

25 But I am happy to report that they agreed to do it,

1 and it sounds like they're going to do it right away. So  
2 that's good news.

3 That's all I have today, Your Honor. Thank you.

4 THE COURT: Do you want to say anything, Mr. Pope?

5 MR. POPE: I do. I want to object to the word  
6 "corpus." I don't know what that means with respect to  
7 document production.

8 So we understand that we want to try to coordinate  
9 and we want to try to keep pace with the MDL. We're going to  
10 respond and object to their RFPs on the 27th, as we said we  
11 would, and we're going to make a document production shortly  
12 thereafter, and then we can talk about what that means,  
13 whether it has any impact on search terms or not.

14 Obviously, in the MDL, they're taking the position  
15 that it does. So I would encourage Mr. Harrod to think about  
16 that.

17 And then, finally, on the motion for clarification,  
18 he did point out it has been filed today. Defendants filed  
19 it, Your Honor. I think it was filed while we're here in  
20 court. And we'll let the motion speak for itself. And,  
21 hopefully, their response will be due before March 4th.

22 THE COURT: All right. That's everything on the  
23 agenda of all three cases.

24 Is there anything else we need to talk about, Mr.  
25 Canfield?

1 MR. CANFIELD: Not for the Consumer Plaintiffs,  
2 Your Honor.

3 THE COURT: Any of the other Plaintiffs?

4 MR. HARROD: No, Your Honor.

5 THE COURT: Anything else, Mr. Balser, Mr. Smith?

6 MR. BALSER: No, Your Honor.

7 MR. POPE: No, Your Honor.

8 THE COURT: All right. Thank you very much.

9 Let me say I know it involved a lot of time and a  
10 lot of billable hours and it was exhausting, but the oral  
11 argument on the motions to dismiss was extremely helpful and  
12 made a difference. So tell your clients they spent a lot of  
13 money on that, but it was helpful and made a difference.

14 MR. SCHNEIDER: Your Honor, may I address the  
15 Court?

16 THE COURT: Yes, sir.

17 MR. SCHNEIDER: I just wanted to make sure as it  
18 relates to the administrative closing of certain cases that  
19 the Court mentioned, that those administrative closings would  
20 not include the City of Chicago or the Commonwealth of Puerto  
21 Rico, seeing that we're about to brief the issue of separate  
22 track with the Court, have a briefing schedule with all  
23 parties, and then come have a hearing on that issue.

24 THE COURT: Well, I don't know if you'll have a  
25 hearing or not. But, anyway, you come up to Ms. Sewell and

1 give her our case file numbers, and those two cases are not  
2 to be closed.

3 MR. SCHNEIDER: Yes, sir. Thank you, Your Honor.

4 THE COURT: And the rest of y'all come up and try  
5 to work out a date on a Friday afternoon for the next status  
6 conference.

7 Thank you very much. Court's in recess until  
8 further order.

9 (Proceedings concluded at 2:59 p.m.)

10 - - - - -

11 Reporter's Certification

12 I certify that the foregoing is a correct transcript from the  
13 record of proceedings in the above-entitled matter.

14 s/Diane Peede, RMR, CRR, CRC  
15 Official Court Reporter  
16 Date: February 22, 2019 United States District Court  
Northern District of Georgia

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